

United States Bankruptcy Court
Eastern District of Michigan
Southern Division

In re:

Kevin Robert Ashby,

Debtor.

Case No. 05-71123

Chapter 7

Mark H. Shapiro,

Plaintiff,

Adv. Case No. 05-5132

v.

Kevin Robert Ashby,

Defendant.

Opinion Regarding Order to Show Cause

On April 19, 2006, the Court entered an order requiring the debtor's attorney, Chimko, Dzialo & Dimovski, P.C. to appear and show cause why it should not be held responsible for some or all of the trustee's expenses in pursuing his objection to the debtor's discharge. On May 11, 2006, Chimko, Dzialo & Dimovski, P.C. filed a response to the order to show cause. The Court held a hearing on May 15, 2006 and took the matter under advisement.

On April 18, 2006, in open court, the Court identified several issues with the manner in which Chimko, Dzialo & Dimovski, P.C. handled this case. First, the information presented on Schedule A regarding the mortgage and equity in the debtor's residence was disclosed in a manner to suggest there is no equity in the home, although there is in fact equity in the home. Second, Debtor's attorney improperly deducted an arbitrary 10% cost of liquidation from the values reported on the schedules without disclosing that such a deduction had been made. Finally, Debtor's attorney did not fulfill its obligation to promptly

report previously undisclosed assets and to make timely amendments to the schedules as warranted.

In its response to the order to show cause, debtor's attorney noted that Schedule A does in fact reveal the 10% liquidation deduction to the fair market value. Debtor's attorney also asserts that it will no longer use any discounted formula to arrive at the market value of real property. Additionally, debtor's attorney asserts that the delay in filing amendments was based upon a mutual agreement between the debtor's attorney and trustee due to the complexities of the case. Debtor's attorney notes that the debtor was cooperative with the trustee's investigation and that the trustee was not required to issue a subpoena to gather information. Accordingly, debtor's attorney asserts that the delay in filing amendments was not prejudicial to the trustee.

The Court is satisfied that debtor's attorney has properly addressed the Court's concerns and will amend its practice to adhere to the Code's requirements. Additionally, the Court notes that the trustee did not file a motion for sanctions, nor did the trustee take a position on this matter at the May 15, 2006 hearing. Accordingly, the Court determines that sanctions are not appropriate in the case and the order to show cause will be dismissed.

The Court will enter an appropriate order.

Entered: June 08, 2006

/s/ Steven Rhodes
Steven Rhodes
Chief Bankruptcy Judge